



**OAC Supplantation/Maintenance of Effort Workgroup Summary Report**  
March, '07

**BACKGROUND**

**THE MOTION:** (passed by Commissioners at the Mental Health Services Oversight and Accountability Commission Meeting January 26, 2007) MHSOAC will convene a MHSA Maintenance of Effort Work Group (MOE Work Group) to recommend necessary changes to existing MHSA Supplantation policies at the County and State levels.

- The MOE Work Group will be chaired by the MHSOAC and will include, but not be limited to, representation from: California Mental Health Directors Association, Department of Mental Health, California Mental Health Planning Council, Client, Family Member, Mental Health Providers.
- The purpose of the MOE Work Group is to ensure that MHSA dollars **add** to the mental health funding that existed at the State and County levels prior to the passage of the MHSA. The intent is to ensure that necessary changes to supplantation policies be carried out as part of the regulation process. The OAC expresses strong disagreement with any county that seeks to decrease the maintenance-of-effort requirement below its level at the date of passage of the MHSA.
- The MHSOAC gives the MOE Work Group the authority to recommend changes to MHSA Emergency Regulations that refer to Supplantation (California Code of Regulations, Chapter 14, Section 3410).
- The MHSOAC gives the Commission Chair or his designee the authority to represent MOE Work Group findings to the Legislative Budget Subcommittee **prior** to review by the full MHSOAC.
- The MHSOAC gives the MOE Work Group the authority to represent MOE Work Group findings to California County Boards of Supervisors **prior** to review by the full MHSOAC.
- The MOE Work Group will report back to the Commission in March, 2007.

**ISSUES IDENTIFIED FOR CONSIDERATION:**

1. Is there enough protection/oversight at the state level to prevent supplantation?  
(example: is maintenance of effort clearly defined enough? Is proposed elimination of AB 2034 an example of supplantation?)
2. Who has the role for enforcing adherence to supplantation regulations at the state level?
3. Counties are able to transfer 10% of realignment funding out of mental health each year. Could this be an area of supplantation vulnerability?
4. Some County's Boards of Supervisors (BOS) provided more than required levels of funding in their counties for mental health services (overmatch). Some of those BOS are now reducing that overmatch. Some think this is a form of supplantation: could BOS be assuming MHSA dollars will fund services once being funded via the overmatch dollars? Others believe this is not supplantation so long as the MHSA dollars are not used to fund programs/services funded by the overmatch if they were in existence on 11/02/04 when MHSA passed.

**WORKGROUP MEMBERSHIP:** Wes Chesbro, Chair

Catherine Bond	Ed Walker	Don Kingdon	Carol Hood	Aaron Carruthers
Dan Brzovic	Laurel Mildred	Dede Ranahan	Paul Dobson	Jim Preis
Jerry Doyle	Rusty Selix	Fran Edelstein	Carmen Diaz	Jennifer Clancy
Sally Zinman	Oscar Wright	Rudy Arrieta	Sheri Whitt, staff	

**MEETING DATES:** February 8<sup>th</sup>-2 hours, March 1<sup>st</sup>-2 hours

## **ISSUES**

### **1. Is there enough protection/oversight at the state level to prevent supplantation? (example: is maintenance of effort clearly defined enough? Is proposed elimination of AB 2034 an example of supplantation?)**

Clearly there is not enough protection/oversight at the state level to prevent supplantation. The Workgroup believes supplantation, incursion and maintenance of effort issues pose the single largest threat to the successful implementation of the Act. Maintenance of effort is clearly defined enough in the Act, but interpretation as represented in the DMH Emergency Regulations is potentially unclear.

**Proposed Motion #1: Advocate for DMH to change language of DMH Emergency Regulations to more clearly define maintenance of effort. The process to make this happen will be for the OAC to submit written testimony and make public comment on April 16, 2007 at the DMH Public Hearing.**

The Proposed elimination of AB 2034 is clearly an example of supplantation. The Workgroup recommending sending the attached letter to the Assembly Budget Sub 1 Chair, Assemblymember Patty Berg and to the Senate Budget Sub 3, Chair, Senator Elaine Alquist. *Related issue: The elimination of Children's System of Care funding was also a supplantation issue that went unaddressed at the time the funding was eliminated. The text of the proposed letter contains reference to CSOC funding as an additional example of supplantation.*

**Proposed Motion #2: Send a letter to Assemblymember Patty Berg, Assembly Budget Sub 1 Chair and Senator Elaine Alquist, Senate Budget Sub 3, Chair (as attached) under signature of the MHSOAC Commissioners (Darrell Steinberg, Chair) formally rejecting the Governor's proposed elimination of Integrated Services for Homeless Adults with Serious Mental Illness (AB 34/2034).**

### **2. Who has the role for enforcing adherence to supplantation regulations at the state level?**

The workgroup was not able to develop a complete answer to this question during its meetings but was clear the Commission has a critical role in proposing strategies and approaches regarding enforcing adherence to supplantation regulations. There is a clear intent, as stated in the Act, that MHSA dollars were to expand mental health services and it can be accurately assumed this is what California voters intended when they passed the Act. Section 5845, (6) of the Act stipulates the Commission may "*At any time, advise the Governor or the Legislature regarding actions the state may take to improve care and services for people with mental illness*". The Commission has a responsibility to inform the Governor and the Legislature when we have concerns related to supplantation and maintenance of effort. The Workgroup is proposing creation of an on-going OAC Mental Health Financing Technical Resource Group to help fulfill this responsibility.

**Proposed Motion: Create a MHSOAC Mental Health Financing Technical Resource Group (MHFTRG). The charge of the MHFTRG will be to identify public mental health financing issues that impact MHSA implementation and recommend to the MHSOAC actions it may take to ensure the objectives of MHSA (mental health systems transformation and program expansion) are met.**

**3. Counties are able to transfer 10% of realignment funding out of mental health each year. Could this be an area of supplantation vulnerability?**

This was an area of much discussion and concern. There are those who support language in DMH Emergency Regulations limiting the transfer of realignment funding to 10% and view it as a protection of funding which might otherwise be transferred out in larger amounts than the allowed 10%. There are others who believe the 10% limit cited in the emergency regulations gives tacit permission to California County Boards of Supervisors to make realignment transfers they might not make at all otherwise since there is a genuine case to be made for realignment transfers to be viewed as supplantation.

**Proposed Motion: Refer to Mental Health Financing Technical Resource Group (if adopted) or permanent alternative option.**

**4. Some County's Boards of Supervisors (BOS) provided more than required levels of funding in their counties for mental health services (overmatch). Some of those BOS are now reducing that overmatch. Some think this is a form of supplantation: could BOS be assuming MHSA dollars will fund services once being funded via the overmatch dollars? Others believe this is not supplantation so long as the MHSA dollars are not used to fund programs/services funded by the overmatch if they were in existence on 11/02/04 when MHSA passed.**

The Workgroup felt this was clearly an area of supplantation which they propose addressing in two ways. The Workgroup believes DMH Emergency Regulations language needs to be changed to be more aligned with language in the Act. In addition, the Workgroup proposes sending the attached letter to the California Mental Health Directors Association and to the California State Association of Counties outlining the Commission's position regarding this issue and its intent to employ all means available to discourage and stop this practice.

**Proposed Motion #1: Advocate for DMH to change language of DMH Emergency Regulations to more clearly define maintenance of effort. The process to make this happen will be for the OAC to submit written testimony and public comment on April 16, 2007 at the DMH Public Hearing.**

**Proposed Motion #2: Send a letter to Patricia Ryan (Executive Director, California Mental Health Directors Association), Don Kingdon (Deputy Director, California Mental Health Directors Association), Mark Refowitz (President, California Mental Health Directors Association), Frank Beigelow (President, California State**

Association of Counties), with a cc to Stephen Mayberg (Director, Department of Mental Health) and Kim Belshe (Secretary, California Health and Human Services Agency)(attached) clearly stating the Commission's opposition to all forms of supplantation.

**ADDITIONAL ISSUES IDENTIFIED DURING WORKGROUP DISCUSSION**

**1. Incursion:** In addition to supplantation and maintenance of effort issues, incursion issues were identified as another potentially serious threat to implementation of the MHSA. This term broadly describes a practice in which the state suggests/mandates the use of MHSA dollars to fund statewide projects without the involvement and approval of mental health directors.

**Proposed Motion:** Refer to Mental Health Financing Technical Resource Group (if adopted) or permanent alternative option.

**2. 5% provider rate reduction imposed on county Mental Health Plans (MHPs) in FY 2003-04, and elimination of cost of living adjustments (COLA) for this program** CMDA letter attached outlining issues; another supplantation issue to consider.

**Proposed Motion:** Write letter to Senator Elaine Alquist, Senate Budget Sub 3, Chair, notifying her the Commission supports restoration of the 5% provider rate reduction imposed on county Mental Health Plans (MHPs) in FY 2003-04, and supports providing for needed cost of living adjustments (COLA) for this program.

**3. There are anecdotal reports of counties redirecting existing staff into positions which are either being declared new, MHSA funded positions, or which are being described as positions in which the staff's role is being expanded to take on duties consistent with MHSA language. This is not increasing overall capacity in these counties to better serve consumers and family members- it is changing the face of current capacity to be consistent with MHSA language so that these positions can be funded with MHSA dollars.**

**Proposed Motion:** Refer to Mental Health Financing Technical Resource Group (if adopted) or permanent alternative option.

